IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 25451 of 2006(E)

PETITIONERS:
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1. **JOSEPH ZACHARIAS, S/O. JOSEPH,**
   AGED 39 YEARS, ADDL.GOVT.PLEADER AND ADDL. PUBLIC PROSECUTOR,ADDL.DIST.& SESSIONS FAST TRACK (ADHOC-I) COURT, KALPETTA, RESIDING AT MARIVELIL HOUSE, SEETHA MOUNT P.O., PULPALLY, WAYANAD.

2. **K.C. JOSHUA,**
   ADDL.GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR, ADDL.DIST.& SESSIONS FAST TRACK (ADHOC-II) COURT, PATHANAMTHITTA, RESIDING AT MUMBILKULANGARA HOUSE, ELANTHOOR P.O., ELANTHOOR.

3. **T.A. SANTHOSH,**
   ADDL.GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR, ADDL.DIST.& SESSIONS FAST TRACK (ADHOC-II)COURT, THODUPUZHA, RESIDING AT THEVARKUNNAL HOUSE, JHUDANGANADU P.O., MUTTOM, THODUPUZHA.

4. **JOHNY JOSE,**
   ADDL.GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR, ADDL.DIST.& SESSIONS FAST TRACK (ADHOC-I) COURT, KOTTAYAM, RESIDING AT NIDHIRI PUTHANPURA,KOZHA P.O KURAVILANGAD.

5. **K.P. RAJEEVAN,**
   ADDL.GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR, ADDL.DIST. & SESSIONS FAST TRACK (ADHOC-I) COURT, ERNAKULAM, RESIDING AT KALLIKKADAVIL HOUSE, VI/296-(1), MADHAVAN PERIYAR LANE,NEAR BANK JN. ALUVA-683101.

6. **SMT.JESSY GEORGE,**
   ADDL.GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR, ADDL.DIST.& SESSIONS FAST TRACK (ADHOC-II) COURT, ERNAKULAM, RESIDING AT THAYIL OLIVE VILLA, PALACE NAGAR ROAD, THEKKUMBHAGAM, TRIPUNITHURA.

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7. SMT. LEENA JAYASURIAN,
ADDL.GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR,
ADDL. DIST.& SESSIONSS FAST TRACK (ADHOC-I) COURT,
TRICHUR, RESIDING AT JAYA NIVAS, THIRUVANATH ROAD,
AYYANTHOLE P.O., TRICHUR-680003.

8. PIOUS MATHEW,
ADDL. GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR,
ADDL. DIST. & SESSIONS FAST TRACK (ADHOC-I) COURT,
TRICHUR, RESIDING AT VARAMBHILAKAM HOUSE,
P.R. PADY, EDAKKUNNI VILLAGE, THYKKATTUSSERY P.O.,
OLLUR, TRICHUR.

9. SAJU GEORGE,
ADDL. GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR,
ADDL. DIST.& SESSIONS FAST TRACK (ADHOC-I) COURT,
MANJERI, RESIDING AT EMPARANYIL HOUSE,
PANAMPILAVU P.O., AREACODE, MALAPPURAM.

10. V. SAJAN PRASAD,
ADDL. GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR,
ADDL.DIST.& SESSIONS FAST TRACK (ADHOC-II) COURT,
TRIVADNRUM, RESIDING AT ELDAD, CHITTAZHA,
VATTAPPARA P.O., TRIVANDRUM.

11. K.T. GEORGE,
ADDL. GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR,
ADDL. DIST.& SESSIONS FAST TRACK (ADHOC-II) COURT,
KALPETTA, RESIDING AT KUZHIVELIL HOUSE,
SULTHAN BATHERY, WAYANAD.

2. AZAD ARYADAN,
ADDL. GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR,
ADDL. DIST.& SESSIONS FAST TRACK (ADHOC-III)COURT,
MANJERI, RESIDING AT ARYADAN HOUSE, EDAKKARA,
MUNDA P.O., VAZHIKKADAVU VILLAGE, NILAMBUR.

13. K.T. ANTONY,
ADDL. GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR,
ADDL. DIST.& SESSIONS FAST TRACK (ADHOC-II) COURT,
PALAKKAD,RESIDING AT MARIA BHAVAN,GOVINDAPURAM P.O
PARUTHIKKAD, PALAKKAD.

14. K.A. AUGUSTIINE JOSEPH,
ADDL. GOVT.PLEADER AND ADDL.PUBLIC PROSECUTOR,
ADDL. DIST.& SESSIONS FAST TRACK (ADHOC-I) COURT,
THODUPUZHA, RESIDING AT KUMBALATH HOUSE,
IDIYANAL P.O., RAMAPURAM, PALA.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY THE SECRETARY, DEPARTMENT OF LAW
(INSPECTION WING), GOVERNMENT SECRETARIAT,
TRIVANDRUM-695001.

BY ADVOCATE GENERAL SRI.C.P.SUDHAKARA PRASAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04/01/2007 ALONG WITH WPC NO. 33372 OF 2006,
THE COURT ON 19/02/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF G.O.NO.242/01/HOME DTD. 22/12/2001 ISSUED BY RESPONDENT.**
EXT.P2:	**COPY OF G.O.NO.258/03/LW DTD. 14/07/2003 ISSUED BY RESPONDENT.**
EXT.P3:	**COPY OF G.O.NO.44/03/LAW DTD. 28/02/2003 ISSUED BY RESPONDENT.**
EXT.P3(A):	**COPY OF G.O.DTD. 04/03/2006 ISSUED BY GOVT.**
EXT.P4:	**COPY OF LETTER DTD. 07/08/2006 ISSUED BY GOVT.**
EXT.P5:	**COPY OF G.O.DTD. 14/08/2006 ISSUED BY DEPUTY COLLECTOR, PALAKKAD.**
EXT.P6:	**COPY OF JOINT REPRESENTATION DTD. 16/11/2005 SUBMITTED BY THE PETITIONERS.**
EXT.P7:	**COPY OF G.O.(P) NO.521/2000/LAW DTD.03/10/2000 ISSUED BY LAW (II) DEPARTMENT.**
EXT.P8:	**COPY OF G.O.(MS) NO.506/2006/LAW DTD. 08/12/2006 ISSUED BY THE RESPONDENT DEPARTMENT.**
EXT.P9:	**COPY OF CERTIFICATE DTD. 29/08/2006 ISSUED BY ADDITIONAL DISTRICT AND SESSIONS JUDGE, TRIVANDRUM TO THE 10TH PETITIONER.**

/TRUE COPY/

Kss

K.K. DENESAN, J.

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W.P.(C)Nos.25451 & 33372 OF 2006
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Dated this the 19th February, 2007

J U D G M E N T

W.P.(C) No. 25451/06

The petitioners were appointed as Additional Government Pleaders and Additional Public Prosecutors as per Ext.P3 and similar orders issued by the respondent. Ext. P3 is copy of Govt. Order dated 28-2-2003 appointing the 5th petitioner as the Additional Govt. Pleader and Additional Public Prosecutor in the Fast Track (Ad hoc I) Court, Ernakulam for three years. Similar orders were issued appointing other petitioners in the respective Fast Track Courts. On the expiry of 3 years from the date of their initial appointment, the respondent issued Ext. P3(a) order dated 4-3-2006 and similar orders reappointing them for a further period of 3 years with effect from the date of expiry of the first term.

2. Ext. P3 as also similar orders specifically state that the conditions of service, duties etc. of those appointed as per the said orders will be as

envisaged in the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978 (hereinafter referred to for short, the 'Rules' only) issued under G.O.(P) No. 11/78/Law dated 25-1-1978 as amended from time to time. The District Collector is the drawing and disbursing officer as far as the remuneration payable to the petitioners and other Additional Govt. Pleaders and Additional Public Prosecutors are concerned.

3. While the petitioners were thus working as the Additional Govt. Pleaders and Additional Public Prosecutors in the Fast Track Courts, Govt. letter dated 7-8-2006 was issued requesting the District Collectors to furnish a panel of qualified advocates with address etc., for being considered for appointment as District Government Pleaders/ Public Prosecutors as also Additional Govt. Pleaders/Additional Public Prosecutors in all the District Court Centres, Additional Dist. Court Centres and Sub Court Centres in the respective districts. Ext. P4 is the letter addressed to the District Collector, Ernakulam. Ext. P5 is the letter issued by the District Collector,

Wayanad requesting the Presidents of the Bar Associations in that District to furnish the panel of qualified advocates for appointment to the post of Additional Govt. Pleaders and Additional Public Prosecutors including those in the Fast Track Courts.

4. Feeling aggrieved, the petitioners have filed this writ petition seeking for a writ of mandamus directing the respondent not to proceed further in the matter of drawing up fresh panel of advocates for appointment as Additional Govt. Pleaders/Additional Public Prosecutors in the Fast Track Courts pursuant to Ext. P4 and for a declaration that the petitioners have the right to hold the post of Additional Govt. Pleaders/Additional Public Prosecutors in Fast Track Courts during the currency of Fast Track Courts. During the pendency of the writ petition the extended term of some of the petitioners had expired. For example, the term of the 6th petitioner expired on 13-2-2006 and that of the 8th petitioner on 16-11-2006. The respondent has not passed any order extending further the term of their appointments. Under the above circumstances, the reliefs prayed for by them have

become infructuous. Yet another development that has taken place is the issuance of Ext. P8 Govt. Order dated 8-12-2006 terminating the services of some of the Additional Govt. Pleaders and Additional Public Prosecutors in the District Court Centres, Thiruvananthapuram as also the Fast Tract Courts in the various Court Centres in Thiruvananthapuram District and appointing 12 advocates as the Additional Govt. Pleaders and Additional Public Prosecutors in those courts.

5. The power to terminate of the services of the Additional Govt. Pleaders and Additional Public Prosecutors is traceable to Rule 17 of the Rules. Ext. P8 says that they will be paid one month's salary in lieu of one month's notice as provided in the said rule. As per Ext. P8 the service of the 10th petitioner stands terminated along with some others. However, the termination has not taken effect since a learned Judge of this Court directed that status quo as on 7-12-2006 shall be maintained. The said interim order has been extended subsequently.

6. The main ground urged on behalf of the

petitioners is that the Additional Govt. Pleaders and Additional Public prosecutors appointed in the Fast Tract Courts belong to a distinct class or category and are entitled to be treated differently from that of other Govt. Pleaders and Public Prosecutors appointed in the ordinary civil and criminal courts in the various districts of the State. The petitioners' services shall not be terminated in exercise of the power conferred on the respondent under Rule 17 of the aforesaid Rules, because those rules do not govern their service conditions. The proposed termination of the services of the petitioners even before they have completed the extended term of their appointment is not justified because the only reason for effecting change in the personnel is the change of Government. The discretion vested in the Government has been improperly exercised and the impugned action is illegal and arbitrary. Unless the respondent is satisfied that the petitioners are unfit to hold the post of Additional Govt. Pleaders/Additional Public Prosecutors, the preparation of a fresh panel to replace them is warranted. The petitioners would contend that since

the scheme for constituting Fast Tract Courts is a centrally funded scheme, prior sanction of the Central Government is necessary before dispensing with the services of the petitioners as Law Officers. Lastly, it is contended that the petitioners who were appointed on ad hoc basis shall not be replaced by another batch of ad hoc officers.

7. The respondent has filed a detailed counter affidavit. It is contended that the service conditions of the petitioners are governed by the rules. As per the rules the petitioners' service is liable to be terminated at any time before the expiry of the term of their appointment, without assigning any reason. The Government has the right to change the Law Officers who by profession are lawyers and the power to appoint another in whom the respondent has sufficient confidence. The distinction sought to be introduced by the petitioners between other Law Officers and the Additional Govt. Pleader/Additional Public Prosecutor attached to the Fast Track Courts is without any substance. Creation of Fast Track Courts, appointment of the presiding Judges, staff, etc., are not to be

clubbed or confused with the appointment of a Pleader. The tenure of the incumbents holding the post of Additional Govt. Pleaders/Additional Public Prosecutors of the Fast Track Courts is not coterminous with the continuance or term of the Fast Track Courts. The allegation that the impugned action is politically motivated is contrary to facts. The decision to prepare a panel of advocates for appointing more competent and efficient Law Officers in whom the respondent can repose confidence is a policy decision which the Government is competent to take. Appointment of Law Officers is a professional engagement. The relation between the Government and the Law Officers is basically that of client and lawyer. The petitioners have no legally enforcible right to demand that once appointed they shall be allowed to continue as the Additional Govt. Pleader and Additional Public Prosecutor. Government shall not be denied the freedom to have better lawyers as its Law Officers in whom it can repose confidence to conduct cases prosecuted by the State.

8. Subsequent to the filing of the counter

affidavit the petitioners filed an interlocutory application to amend the writ petition by incorporating a new ground seeking to quash Ext. P3 and such other appointment orders to the extent they refer to the provisions of the rules, contending that those rules are not applicable to the petitioners.

9. I have heard Shri. K.P. Dandapani, the learned senior counsel for the petitioners and Shri. C.P.Sudhakara Prasad, the learned Advocate General for the respondent.

10. The Fast Track Courts came to be established across the country for the purpose of expeditious clearance of long pending cases in the District and the Subordinate Courts as per a time bound programme, on ad hoc basis. The establishment of Fast Track Courts is under a centrally funded scheme pursuant to the recommendations of the Eleventh Finance Commission. In implementation of the above scheme, 26 Fast Track Courts at the rate of two courts each in 13 districts and one court each in two districts in the State of Kerala were established for five years from 2001-02 to 2004-05 vide G.O.(MS) No. 242/01/Home dated 22-12-2001.

The above period of 5 years has been subsequently extended for a further period of 5 years. That means, the Fast Track Courts are to function till 2010. The respondent accorded sanction for the creation of one post of Additional District Judge and few posts of ministerial employees in each Fast Track Court. Sanction was accorded for the creation of one post of Additional Public Prosecutor also. Certainly the post of Additional Public Prosecutor thus created shall continue to exist as long as the Fast Track Courts continue to function for the effective dispensation of the administration of criminal justice. This does not, however, mean that the tenure of the incumbents appointed to the posts mentioned above will be coterminous with the term for which the posts have been sanctioned or the term for which the Fast Track Courts shall have to function. The incumbent appointed to the post, be it A or B, is liable to be changed by the appointing authority. The learned Advocate General is right in his submission that the existence or termination of the post of Additional Public Prosecutor, be it in the District and Sessions Court

or in the Fast Track Courts shall not be confused with the tenure of the termination o the services of the incumbent appointed to those posts. Neither the scheme relating to the establishment of the Fast Track Courts nor the decision of the Supreme Court in ***Brij Mohan Lal*** v. ***Union of India*** {(2002) 5 SCC 1} dealing with the creation and function of the Fast Track Courts says or suggests to the contrary. Section 24 of the Code of Criminal Procedure too does not stand in the way of changing the personnel appointed under that provision. Hence, I am of the opinion that it will be unreasonable to hold that a person once appointed as the Public Prosecutor in the Fast Tract Court shall not be removed from that post. He has no legal right to claim that he shall continue to work as such as long as the Fast Track Court exists. If the Presiding Officers of the Fast Track Courts or the members of the ministerial staff of those courts claim immunity against transfer or removal from service on similar grounds could it be countenanced? Hence, I have no hesitation to reject the contention that the tenure of the petitioners as Additional Govt. Pleaders/Additional

Public Prosecutors is coterminous with that of the post they hold or that of the Fast Track Courts.

11. The contention of the petitioners that their appointments and their conditions of service are outside the purview of the rules is also liable to be rejected. Even a cursory reading of orders like Ext. P3 and P3(a) makes it clear that the appointments were made under the rules. Ext. P3, inter alia, says:

> "His conditions of service, duties etc., will be as envisaged in the rules issued under the Government Order read as 1st paper above as amended from time to time."

The Government Order referred to above is G.O.(P) No. 11/78/Law dated 25-1-1978 which is none other than the Rules published in Kerala Gazette dated 20-6-1978 in exercise of the powers under sub-section (1) of Section 2 of the Kerala Public Services Act, 1968. Reference to the said rule can be seen in Ext. P3(a) also, by which the 5th petitioner was reappointed after the expiry of the first term of his appointment. It is also pertinent to note that Ext. P4 Govt. letter requesting the District Collectors to furnish a panel of qualified advocates has been issued under the provisions of the aforesaid rules. "Government Law Officer" as defined

in the rules means a person appointed by the Government to conduct Government cases in any Court or Tribunal in the State or in the Supreme Court, and includes certain specified categories also. Going by the above definition, the petitioners were appointed as Government Law Officers. There is nothing to show that the rules do not apply to the petitioners. They have no case that their service conditions are governed by any other rules. Moreover, having accepted the appointment with the terms and conditions specifically mentioned in Exts. P3, P3(a) and similar orders of appointment and reappointment, the petitioners cannot be heard to say hat they are not governed by the rules. I find no merit in the contention that the above rules do not apply to the petitioners.

12. Since the rules are applicable to the petitioners, it follows that the Government is entitled to invoke Rule 17 of the Rules which reads:

> "17. Termination of appointment-(1) Notwithstanding anything contained in these rules, the Government may terminate the appointment of any Government Law Officer other than a Special Government Pleader or Special Public Prosecutor, at any time before the expiry of the term of his appointment without assigning any reasons therefor:

> Provided that before such termination he shall be given one month's notice or shall be paid one month's salary in lieu of such notice."

The Government have not passed orders pursuant to Ext.P4 except in the case of petitioner No. 10 vide Ext. P8. However, in view of the declaration sought for by the petitioners it is necessary to deal with the contention that the service of the petitioners cannot be terminated in exercise of the power of the Government under Rule 17 of the Rules. Hence, the above discussion.

13. The petitioners approached this Court at the stage of calling for fresh panels. They apprehended that their services will be terminated in contravention of law. The respondent in its counter affidavit has taken the stand that it has got the power to terminate the services in due compliance of the procedure laid down in Rule 17 of the rules. It is contended in that context that the Government shall not be denied the freedom to choose a better professional man having more competency in the work to be performed and in whom the Government, as a litigant, can repose more confidence

as every client is entitled to. I am of the opinion that the above reasons are neither relevant nor extraneous to the issue for consideration.

14. It is true that the power to appoint a Law Officer as also to terminate the service of a Law Officer shall not be exercised arbitrarily. In this case the procedure hitherto followed does not spell out any exercise of arbitrary power. Calling for a fresh panel with due intimation to the District Collector and the various Bar Associations with the specific direction that members belonging to the Scheduled Castes and Scheduled Tribes shall be given due representation and with the further direction that the fresh panel shall be placed for the consideration of the Government only after due consultation with the District Judges concerned is in the right direction. This Court is not sitting in appeal over the decision of the Government as regards the competency of a lawyer or the confidence which the client would like to repose in the lawyer concerned before he is appointed as Government Law Officer. The Apex Court has held in ***State of U.P.*** v. ***Johri Mal*** {(2004) 4 SCC 714} has held

as follows:

> "So long as in appointing a counsel the procedures laid down under the Code of Criminal Procedure are followed and a reasonable or fair procedure is adopted, the court will normally not interfere with the decision. The nature of the office held by a lawyer vis-a-vis the State being in the nature of professional engagements, the courts are normally chary to overturn any decision unless an exceptional case is made out. The question as to whether the State is satisfied with the performance of its counsel or not is primarily a matter between it and the counsel. The Code of Criminal Procedure does not speak of renewal or extension of tenure. The extension of tenure of Public Prosecutor or the District Counsel should not be compared with the right of renewal under a licence or permit granted under a statute. The incumbent has no legal enforceable right as such. The action of the State in not renewing the tenure can be subjected to judicial scrutiny inter alia on the ground that the same is arbitrary. The courts normally would not delve into the records with a view to ascertain as to what impelled the State not to renew the tenure of a Public Prosecutor or a District Counsel."

In the above decision the Apex Court has further held that although, discretionary powers are not beyond the pale of judicial review, the courts, it is trite, allow the public authorities sufficient elbow space/play in the joints for a proper exercise of discretion. Paragraph 44 of the above decision is also worth quoting. The same reads:

> "44. Only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State while appointing the Public Prosecutors must bear in mind that for the purpose of upholding the rule of law, good administration of justice is imperative which in turn would have a direct impact on sustenance of democracy. No appointment of Public Prosecutors or District Counsel should, thus, be made either for pursuing a political purpose or for giving some undue advantage to a section of the people. Retention of its counsel by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event, even a good performance by a lawyer may not be of much importance."

15. In ***Mohammed Ashraff*** v. ***State of Kerala*** {1991 (2) KLT 818} a Division Bench of this Court {Jagannadha Rao, C.J. (as the Hon'ble Chief Justice then was) & Viswanatha Iyer, J,} had occasion to consider the scope and application of Rule 17 of the rules. The Bench considered the contentions raised by the parties in that case in the light of the satement of law made by the Apex Court in ***Kumari Shrilekha Vidyarthi*** v. ***State of U.P.*** (AIR 1991 S.C. 537), and after an elaborate discussion of the power conferred on the Government to terminate the service of a Law Officer,

without assigning any reason, held as follows:

> "In our view, the aforesaid judgment of the Supreme Court is clearly distinguishable on facts. In the case before us, there is no omnibus order of termination applicable to all officers. Out of a large number of Government Pleaders, some resigned, some were continued (by way of fresh appointment orders) and the services of the others were terminated. The continuance of some officers is based on a letter of the Advocate General. The termination of each of the others is stated to be based on a decision of the Council of Ministers that their services are, in fact, not necessary, and because the Government thought that the office, which is position of trust and confidence, was not to be held by them. Government, it is stated, wanted to appoint persons in whom it had sufficient confidence and who, according to the Government, had sufficient competence. The case before us is not a case where there is exfacie arbitrariness and there is no question of the burden straightaway being shifted to the State. Even assuming that the burden shifted to the State at some stage, it has, in our view, been sufficiently discharged by the State by assigning various plausible reasons based on Government's policy. Review of the wisdom of such a policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review.
>
> While the Supreme Court in Shrilekha Vidyarthi's case has stated in what circumstances orders of termination of services of Government Pleaders can be treated as ex facie arbitrary, decisions of this Court have laid down guidelines as

to when such termination can be treated as being for good reasons. We shall now refer to them. It has been stated that a member of the bar, belongs to a noble and learned profession, and he cannot even submit an application seeking appointment as Government Pleader. The relationship between Government and its counsels is qualitatively different from that between master and servant. It is essentially a position which requires mutual confidence and trust: Mrs. Baby George v. State of Kerala, 1973 KLJ 923. As such, no member of the profession would (or should) cling on to a file or a client, the moment the client is seen to show the slightest dissatisfaction about consel's conduct (or service): T.D.Rajalakshmi v. State of Kerala, O.P.8374 of 1984-F dated 8.10.1984. Going by the rationale of the work which a Government Pleader has to perform, it is (perhaps) only proper that the Government have the power given to them to terminate the services without "assigning" any reason: T.D.Rajalakshmi v. State of Kerala (D.B), W.A.No:497 of 1984 dated 20.11.1984, which, we regard, is to be subject to the condition that valid reasons, in fact otherwise exist, or are discernible, though not actually "assigned" in the order of termination. The relationship being fiduciary is on a higher plane, in a different context and at a different level. Though it may be an office under the State, it is one which necessitates an extraordinary degree of confidence on the part of the State. To compel the State to continue to deal with a Law Officer irrespective of other circumstances would be an arbitrary imposition of a service of a Law Officer on the Government and may also be contrary to public policy: Kunjukrishnan Nair v. State of Kerala, 1988 (2) KLT 1015. A

> lawyer has to be a person in whom the Government has confidence: P.K.Kunjukrishnan Nair v. State of Kerala, (D.B), W.A.No:240 of 1989 dated 26.6.1989." (emphasis supplied)

16. For invoking Rule 17 of the rules it is not a condition precedent that the Government should first take a decision that the Govt. Pleader/Public Prosecutor is unfit to hold that post. Contention to the contrary, is without any merit. In Johri Mal (supra) the apex Court inter alia has observed that:

> "the State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event a good performance by a lawyer may not be of much importance."

Based on the materials placed on record, the petitioners have not succeeded in establishing that the impugned decision is malafide or is the result of a mere change of Government. The contention that approval of the Central Government is necessary before terminating the services of the petitioners is only to be rejected. The mere fact that the scheme is a centrally funded one does not mean that the appointment of Law Officers or for that matter the appointment of any officer for the effective functioning of the Fast

Track Courts require the approval of the Central Government. The statement of law that an ad hoc appointee shall not be replaced by another ad hoc appointee has lost its binding force since the Constitution Bench decision of the Supreme Court in **State of Karnataka v. Umadevi** (2006)4 SCC 1).

17. The impugned decision of the respondent does not appear to be irrational or arbitrary or illegal.

18. Lastly, let us deal with one more point. The writ petition was amended so as to contend that the respondent ought not to have referred to the rules in Exts.P3, P3(a) and similar orders and to seek reliefs on that basis. I find no merit in the above contention. The challenge, on the very face of it, is highly belated. I have found that the rules are applicable to the appointment of the petitioners as Additional Government Pleaders/Addl. Public Prosecutors. In any view of the matter, having accepted the appointments as also the re-appointments and drawn the benefits arising therefrom, it is idle for the petitioners to say that they are not governed by the rules. Relief sought for, as per the

amendment, is therefore declined.

19. The writ petition is liable to be dismissed. I do so.

W.P.(C) No. 33372/06

20. The petitioner is working as Additional Govt. Pleader and Public Prosecutor, Fast Track Court (Ad hoc) III, Pathanamthitta. Relief prayed for by the petitioner and the grounds urged in support of the reliefs are almost similar to those prayed for and urged in W.P.(C) No. 25451 of 2006. The only difference is that the name of the petitioner is included in the fresh panel. It is contended that the District Judge has expressed the view that the petitioner can be considered for retention.

21. Government have not taken any decision as to who should be appointed as Addl. Govt. Pleader/Addl. Public Prosecutor attached to the Fast Track Court (Ad hoc) III, Pathanamthitta, in case the petitioner's service is terminated. Primarily, it is for the Government to choose the best person from the panel of lawyers. Grounds urged in this writ petition which are identical to those in W.P.(C) No. 25451/06 are liable

to be rejected for reasons stated above. I do so. Reliefs prayed for in this writ petition are declined and the writ petition is dismissed.

K.K. DENESAN
JUDGE

jan/